

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0902002692
	)	
BRANDON L. HILL,	)	
	)	
Defendant.	)	

Submitted: December 2, 2010  
Decided: March 22, 2011

**On Defendant's *Pro Se* Motion for Postconviction Relief. DENIED.**

**ORDER**

Daniel McBride, Deputy Attorney General, Wilmington, Delaware 19801.  
Attorney for State of Delaware.

Brandon L. Hill, Howard R. Young Correctional, Wilmington, Delaware. *Pro Se*  
Defendant.

**CARPENTER, J.**

On this 22<sup>nd</sup> day of March, 2011, upon consideration of Defendant's *Pro Se* Motion for Postconviction Relief, it appears to the Court that:

1. Brandon Hill ("Defendant") has filed a *Pro Se* Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61"). For the reasons set forth below, the Defendant's *Pro Se* Motion for Postconviction Relief is denied.

2. On March 16, 2009, Brandon L. Hill ("Defendant") was indicted on the following counts: (1) Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance; (2) Maintaining a Vehicle for Keeping Controlled Substances; (3) Possession of a Narcotic Schedule II Controlled Substance; (4) Possession of Drug Paraphernalia; and (5) Driving While License is Suspended or Revoked. Defendant filed a suppression motion on May 6, 2009, and the motion was heard and denied on June 12, 2009. Following a two-day jury trial, Defendant was found guilty of all charges on November 25, 2009. Defendant was sentenced on January 22, 2010. Defendant filed an appeal with the Supreme Court on February 4, 2010, and his conviction was affirmed by the Supreme Court on August 25, 2010.

3. In his Motion, Defendant raises the following related grounds for relief: (1) Counsel did not have the best interests of the defendant; and (2) Counsel Misconduct. In essence, it appears that the Defendant is alleging ineffective

assistance of counsel. Defendant's motion is not procedurally barred,<sup>1</sup> and therefore the Court will proceed to consider the merits of Defendant's Motion.

4. In order to establish a claim of ineffective assistance of counsel, a defendant must show both (1) that counsel's representations fell below an objective standard of reasonableness, and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.<sup>2</sup> A defendant must prove both prongs by a preponderance of the evidence in order to prevail.<sup>3</sup> Furthermore, a defendant must present specific, concrete evidence in support of an ineffective assistance claim in order to overcome a "strong presumption" that counsel's representation was professionally reasonable.<sup>4</sup> As this Court has explained, "[T]here exists a strong presumption that counsel's actions not only fall within a wide range of accepted professional conduct, but are purposeful and strategic, absent evidence to the contrary."<sup>5</sup> To show prejudice, a defendant "must set forth and substantiate concrete allegations of actual prejudice."<sup>6</sup>

5. Defendant essentially asserts two grounds of ineffective assistance of counsel: (1) that his counsel did not act in his best interests; and (2) that his counsel

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<sup>1</sup> See Del. R. Crim. P 61(i)(1)-(5).

<sup>2</sup> *State v. Ross*, 1997 WL 358600, \*3 (Del. Super. May 29, 1997).

<sup>3</sup> *Id.*

<sup>4</sup> *Drummond v. State*, 962 A.2d 916, \*1 (Del. 2008).

<sup>5</sup> *Ross*, 1997 WL 3586620, at \*3.

<sup>6</sup> *Drummond*, 962 A.2d at \*1.

engaged in unprofessional and deceitful conduct. Upon review of the entire record in this case, the Court finds each of these claims to be without merit. Defendant's first ground, that his counsel did not act in his best interests, is too vague to support an ineffective assistance claim. Defendant makes no reference to specific instances where his counsel did not act in his best interests. Rather, Defendant complains about his counsel's manner, "lack of concern," and a "feeling" that his counsel would not provide adequate representation.<sup>7</sup> Defendant cannot overcome the strong presumption that his counsel acted reasonably without presenting more concrete evidence of his counsel's failure to act in his best interests. A review of the record reflects that counsel did file a suppression motion as requested by the Defendant and once that motion was denied, the evidence was overwhelming and counsel was presented a difficult task of presenting a realistic and credible defense at trial. While at times the Defendant may have "felt" that his counsel was not pursuing a defense, it was his conduct that was complicating the ability to defend the case, not the conduct of his counsel. Accordingly, the Defendant cannot satisfy the first part of the two-part ineffective assistance of counsel test, and he cannot sustain a claim of ineffective assistance on this ground.

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<sup>7</sup> Def.'s Mot. at 3.

6. Finally, the Defendant claims that his counsel engaged in unprofessional conduct and deceit. This claim is also without merit. Defendant asserts that his counsel violated Rule 8.4(c) of the Delaware Lawyers' Rules of Professional Conduct, which prohibits "conduct involving dishonesty, fraud, deceit, or misrepresentation."<sup>8</sup> Defendant claims that his counsel engaged in deceit by asking Defendant's friends and family members, without his consent, to persuade him to accept a plea offer. In particular, Defendant objects to his counsel's statements to friends and family members, based on his counsel's "past experience," that there was no chance that the Defendant would be found not guilty in this case.<sup>9</sup> In support of his allegations of unprofessional conduct by his attorney, the Defendant attached to his motion an affidavit from his mother asserting that the Defendant's counsel had shared "confidential information" but the affidavit is not specific as to what confidential information Defendant's counsel might have shared with third parties.

7. The Court finds that the Defendant has not provided sufficient evidence of professional misconduct to establish an ineffective assistance of counsel claim. It is professionally reasonable for defense counsel to advise a defendant's family of the likely outcome of a case if it goes to trial in an effort to ensure that they, as well as the defendant, are aware of the possible outcomes if he is found guilty. It is also

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<sup>8</sup> Del. Lawyers' Rules of Prof'l Conduct 8.4(c).

<sup>9</sup> Def.'s Mot. 3.

professionally acceptable to seek the assistance of a defendant's family to convince the defendant to accept the plea offer when counsel believes it would be in his client's best interests to do so. The Defendant has not made any specific allegation that his counsel breached the duty of confidentiality or attorney-client privilege in talking to the Defendant's family. Indeed, in his motion, the Defendant states that his counsel made his prediction about the outcome of his case based on his professional experience.<sup>10</sup> It is important that a defendant's counsel share with his client his assessment of the case and the likelihood that it can be successfully defended. Many times this will include counsel encouraging his client to accept the plea offer made by the State. This does not mean that counsel is acting unprofessionally or inconsistent with his client's interest. It simply reflects the reality of the Defendant's situation which often the Defendant is unwilling to accept. That seems to be the case here.

8. For all of the foregoing reasons, Defendant's Motion for Postconviction Relief is hereby DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.  
Judge William C. Carpenter, Jr.

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<sup>10</sup> *Id.*